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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/664,130	09/18/2000	Graylon K. Williams	GIO-004-US	3988

26659 7590 12/04/2003

DINNIN & DUNN, P.C.
2701 CAMBRIDGE COURT, STE. 500
AUBURN HILLS, MI 48326

EXAMINER

MILLER, EDWARD A

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 12/04/2003

22

Please find below and/or attached an Office communication concerning this application or proceeding.

Communication Re: Appeal

Application No.

09/664,130

Applicant(s)

WILLIAMS ET AL.

Examiner

Edward A. Miller

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on _____ is not acceptable because:

- (a) ☐ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 1.17(b).
- (c) ☐ the appeal fee received on _____ was not timely filed.
- (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 1.17(b) is \$_____.
- (e) ☐ the appeal is not in compliance with 37 CFR 1.191 in that there is no record of a second or a final rejection in this application.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.

2. ☒ The ^{Reply} ~~appeal~~ brief filed on 03 November 2003 is NOT acceptable for the reason(s) indicated below:

- (a) ☒ the brief ~~and the brief fee~~ is untimely. See 37 CFR 1.192.
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 1.17(c).
- (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 1.17(c) is \$_____.

~~The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. Extensions of time may be obtained under 37 CFR 1.136(a).~~

See next page.

3. ☐ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 1.17(c) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- (c) ☐ Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
- (d) ☐ other: _____

4. ☐ Because of the dismissal of the appeal, this application:

- (a) ☐ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration of the submission and prosecution has been reopened pursuant to 37 CFR 1.114.

Art Unit: 3641

1. The reply brief filed on November 11, 2003 is unacceptable because it was filed after the expiration of the time for reply.

2. Note 37 CFR 1.193 and 1.136, each in pertinent part [emphasis added]:

§ 1.193 Examiner's answer and reply brief.

...

(b) (1) Appellant may file a reply brief to an examiner's answer or a supplemental examiner's answer within two months from the date of such examiner's answer or supplemental examiner's answer. **See § 1.136(b) for extensions of time for filing a reply brief** in a patent application and § 1.550(c) for extensions of time for filing a reply brief in a reexamination proceeding. ...

§ 1.136 Extensions of time.

(a) (1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) are filed, unless:

(i) Applicant is notified otherwise in an Office action;

(ii) The reply is a reply brief submitted pursuant to § 1.193(b);

(iii) The reply is a request for an oral hearing submitted pursuant to § 1.194(b);

(iv) The reply is to a decision by the Board of Patent Appeals and Interferences pursuant to § 1.196, § 1.197 or § 1.304; or

...

(b) When a reply cannot be filed within the time period set for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time specified. **Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due**, but the mere filing of such a request will not affect any extension under this paragraph. In no situation can any extension carry the date on which reply is due beyond the maximum time period set by statute. ...

The time for filing a reply brief has expired and neither parts (a) nor (b) or 37 CFR 1.136 are applicable at this time. Neither the reply brief filed November 11, 2003 nor the reply brief filed September 2, 2003 have been entered. Since this application is ready for decision, it will be forwarded to the Honorable Board of Patent Appeals and Interferences therefore. Further, since the Reply Brief is not entitled to entry as untimely, the Examiner will not discuss why applicants arguments of a new issue in the Examiner's Answer are defective, or in error.

Art Unit: 3641

3. The information disclosure statement filed November 8, 2003 fails to comply with 37 CFR 1.97(d) because it lacks the fee set forth in 37 CFR 1.17(p). It has been placed in the application file, but the information referred to therein has not been considered.

4. The information disclosure statement filed November 8, 2003 fails to comply with 37 CFR 1.97(d) because it lacks a statement as specified in 37 CFR 1.97(e). It has been placed in the file, but the information referred to therein has not been considered. See 37 CFR 1.97(e):

(e) A statement under this section must state either:

(1) That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement; or

(2) That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in § 1.56(c) more than three months prior to the filing of the information disclosure statement.


The original statement filed September 8, 2003, refers to filing the IDS before the "mailing date of a final rejection." Obviously, a date after the Appeal Brief and Examiner's Answer is not "prior to a final rejection." The reliance on 1.97(c) in said statement is obviously defective.

5. Any inquiry concerning either this or an earlier communication from the Examiner should be directed to Examiner Edward A. Miller at (703) 306-4163. Examiner Miller may normally be reached Monday-Thursday, from 10 AM to 7 PM.

If attempts to reach Examiner Miller by telephone are unsuccessful, his supervisor Mr. Carone can be reached at (703) 306-4198.

If there is no answer, or for any inquiry of a general nature or relating to the application status, please call the Group receptionist at (703) 308-1113.

Miller/em
December 2, 2003



EDWARD A. MILLER
PRIMARY EXAMINER